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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/028,677 03/09/93 ARGENTA

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LACYK, EXAMINER

33M1/1116

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ART UNIT PAPER NUMBER

3305

11

DATE MAILED: 11/16/94

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 7/20/94 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), — days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 2-4, 7, 10-11, 13, 15-38, 42-50 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☒ Claims 1, 5-6, 8-9, 12, 14, 39-41 have been cancelled.
3. ☒ Claims 10-11, 15-34, 42-46, 48-50 are allowed.
4. ☒ Claims 2-4, 7, 13, 35-38, 47 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

Art Unit: 3305

Claims 2-4 and 7 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 37-39, 42, 51, 53 of copending application Serial No. 792,001. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are a mere rearranging in the scope of the claims.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 13, 35-38 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 9, 13, 14, 24 of copending application Serial No. 792,001. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are a mere rearranging in the scope of the claims.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 47 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 31-33 of copending application Serial No. 792,001. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are a mere rearranging in the scope of the claims.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

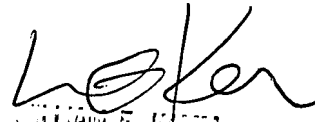
A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Claims 10-11, 15-34, 42-46, 48-50 are allowable over the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Lacyk whose telephone number is (703) 308-2995.


J.P. Lacyk

November 15, 1994


WILLIAM E. KAMM
PRIMARY EXAMINER
ART UNIT 335

